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Supreme Court, U.S.
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No. 10-43

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In The Supreme Court of the United States

JOHN SOPHOCLEUS and THERESA SOPHOCLEUS,

Petitioners,

v.

MARGIE CHAMPION TODD,
PAUL BOWLIN,
JIMMY BUTTS and
DEJARVIS LEONARD,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Eleventh Circuit affirmed the district court's judgment that res judicata cancels the petitioners 42 U.S.C. § 1983 private taking and conspiracy claims against the defendants.

The question in this petition is whether or not the doctrine of res judicata applies to this taking case.

LIST OF PARTIES

All parties are listed in the caption.

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OPINION BELOW

The opinion of the Eleventh Circuit was rendered on April 7, 2010.

STATEMENT OF JURISDICTION

This court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED AND FEDERAL CASE LAW

PRIMARY LEGAL ISSUES
(Procedural Issues)

Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979) federal law on res judicata; Seventh Amendment to the United States Constitution, *see* page 3, *infra*.

SECONDARY LEGAL ISSUES
(Substantive Issues That Were Not Reached)

Fifth Amendment to the United States Constitution, *see* footnote 2, page 4, *infra*; 1975 Code of Alabama, Section 18-1A-190 – Section 18-1A-197 – Condemnation Statute, *see* page 7, *infra*.

STATEMENT OF THE CASE

This case entered the federal court system in May 2000 when petitioners brought this Section 1983 action claiming they were forced out of their home from January through August of 1999, to let contractors for the State of Alabama live during the condemnation legal proceeding with the State Highway Department. Petitioners John and Theresa Sophocleus assert in this case that their home was taken under the Eminent Domain Statute of the State of Alabama, Alabama Code of 1975, 18-1A-1, et seq.

The district court hearing the violation of the taking clause of the Fifth Amendment concluded it lacked subject matter jurisdiction under the Rooker-Feldman doctrine, Rooker v. Fidelity Trust Co., 44 S.Ct. 149 (1923), and District of Columbia Court of Appeals v. Feldman, 103 S.Ct. 1303 (1983). After appeal, in an unpublished opinion, the Federal Circuit Court affirmed, 116 Fed. Appx. 246 (11th Cir. 2004), cert. granted and judgment vacated by 126 S.Ct. 37 (2005); The Supreme Court vacated and remanded for further consideration in the light of Exxon Mobile Corp. v. Saudi Basic Industries Corp., 125 S.Ct. 1517 (2005), wherein the Supreme Court clarified the scope and applicability of the Rooker-Feldman doctrine. The Honorable Eleventh Circuit vacated the district's court's opinion and remanded for the district court to consider its jurisdiction in light of the Supreme Court's Exxon Mobil Opinion, 170 Fed. Appx. 608 (11th Cir. 2005). On remand, the district court concluded Rooker-Feldman was no bar to its subject matter jurisdiction; the district court

then concluded the suit was barred by the doctrine of res judicata. The Eleventh Circuit affirmed, hence the second application for writ of certiorari.

The gravamen of the lower court's decision invoking the doctrine of res judicata is that the Sophocleus could have raised these same issues in the Alabama condemnation proceeding, citing Pelletier v. Zweifel, 921 F.2d 1465, 1501 (11th Cir. 1991), as they are now raising in federal court.

The gravamen of the petitioners' position is that they could not have raised them in the state court proceeding because the only issue in a condemnation proceeding under state law, Ala. Code Section 18-1A-190 – Section 18-1A-197, is valuation.

ARGUMENT FOR GRANTING THE WRIT

I. INTRODUCTION

The court should allow the writ and decide whether the doctrine of res judicata should be used as the Eleventh Circuit has interpreted it, thus circumventing the petitioners' right to a trial by jury, as guaranteed by the Seventh Amendment.[1]

[1] "When we are considering whether to give *res judicata* effect to a state court judgment, we must apply the *res judicata* principles of the law of the state whose decision is set up as a bar to further litigation." *Green v. Jefferson County Com'n*, 563 F.3d 1243, 1252 (11th Cir. 2009). *Accordingly, in this case, Alabama's res judicata principles apply. Under Alabama law, "[t]he elements of res judicata, or claim preclusion, are (1) a prior*

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According to the Eleventh Circuit, the petitioners could have, but did not, "raise the instant arguments in the Alabama courts through a challenge to the negotiated settlement in the condemnation case." The Eleventh Circuit explained this reasoning by stating that this was not a case in which the petitioners had no "reasonable opportunity to raise this federal claim in state proceedings."[2]

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judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both suits." Dairyland Ins. Co. v. Jackson, 566 So. 2d 723 (Ala. 1990). *"If those four elements are present, then any claim that was, or that could have been, adjudicated in the prior action is barred from further litigation."*

[2] The federal case was an "unlawful taking," starting at the state court eviction hearing held in January of 1999, when the state moved that they be removed from their home for the widening of the federal highway (US 280). In that testimony, the state witnessed that their need was immediate and necessary for the public good. The eviction was ordered and petitioners moved out, only to find that the highwaymen moved in and began living in their home for about five to seven months (since the home was not razed immediately, as seen below, the right to possession never really left the Sophocleus):

> "The Sophocleus allege that from January to August of 1999 they were 'forced out of their home' so that the contractors, Reese & Howell, could 'sleep in their house, live in it, use it as quarters, and use it as an office.' They further claim that the defendants did this 'for a vindictive purpose.' Mr. Sophocleus and some of his acquaintances state that they drove by the house during this period and observed people watching television and playing music in the house, playing football and riding a four-wheeler in the yard, working on cars in the shop next to the house, and

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II. THE SAME CAUSES OF ACTION ARE NOT PRESENTED IN BOTH SUITS

Ala. Code Section 18-1A-190 – Section 18-1A-197, says the condemnation action is limited to the value of the property being condemned and appeal to the Alabama Supreme Court to test the Constitutionality of the Act. The petitioners are not questioning the Constitutionality of the Act in this action nor are they questioning the valuation of their home. The petitioners are claiming that certain state employees allowed their highway workers to live in the Sophocleus' home on the theory that they were going to tear it down anyway, so why not live in it for awhile.

This claim did not arise out of the same transaction as the condemnation claim. It did not

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sitting on the stoop drinking what appeared to be beer. The Sophocleus' acquaintance Patrick Byrd observed cars parked at the Sophocleus house at night, 'well after working hours,' which were still there in the morning; thus, he states, people were sleeping there. The Sophocleus also allege that Reese & Howell used their house as an office; their evidence for this is that when Mr. Sophocleus entered the house with the state appraiser in August of 1999, he saw a 'reconnected sewer, replaced phone jacks in the wall, drawings scattered about, milk crates on the floor placed up to those very large wooden spools that are used as a makeshift desk or table, newspaper, used fast-food wrappers, cans, bottles, paper cups and other debris on the floor that I had not left in the home.'"

arise until after the state condemnation action was filed.

Magistrate Judge Walker ruled in her April 2, 2003 opinion (ruling on motions to dismiss) about the res judicata defense in favor of the petitioners. Magistrate Judge Walker writes:

> "Both Reese and the Department argue that the plaintiff's claims are barred by both issue preclusion and claim preclusion. However, in the condemnation action, the issue was the correct valuation of the land. Except for claims [A2A and A2B], which this court will dismiss, the claims raised in this action do not involve the valuation of the land. Indeed, these claims arose after the state initiated the condemnation action from which the plaintiffs appealed (to the Circuit Court of Alabama, emphasis added). The plaintiffs could not have raised them in the probate court (which, arguably would not have had jurisdiction to hear them in any case; see Ala. Code Section 12-13-1; Wallace v. State, 507 So. 2d 466, 467 (Ala. 1987)."

The Eleventh Circuit did not adopt Magistrate Judge Walker's line of reasoning, the correct line of reasoning, and instead adopted the reasoning of the Honorable District Court Judge Myron Thompson, who overruled Magistrate Judge Walker, by granting summary judgment against the petitioners on the issue of res judicata.

The petitioners adopt Judge Walker's reasoning because it is the correct reasoning. The Alabama condemnation statute plainly states that the only issue in a condemnation claim is valuation – See 18-1A-2(a). These Fifth Amendment damage claims, while they may have been brought in state court in a separate action, could not have been brought *as part* of the condemnation lawsuit, because the condemnation claim is for valuation only. The damages to the Sophocleus under the condemnation statute is just the valuation of their home, not their mental distress for the deliberate indifference of the defendants to their Constitutional Right under the Fifth Amendment.

These are the pertinent sections of the Alabama Condemnation Act.

Section 18-1A-2(a). Scope of Chapter: This chapter provides standards for the acquisition of property by condemnors, the conduct of condemnation actions, and the determination of just compensations.

Section 18-1A-197, paragraph (4). Factors upon which opinion as to value may not be based: "Except as provided in subdivision (5) of Section 18-1A-193, the influence upon the value of the property being valued of an exercise of the *police power* (italics added) or of other *non-compensable damage*."[3]

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[3] In the Commentary, the purpose of this paragraph is stated as thus: "Paragraph (4) seeks to exclude from

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Hypothetically speaking, even if the state court accepted the federal case, it would have been bifurcated as a matter of law under Section 18-1A-2(a) and Section 18-1A-197(4). The issues of the two cases are not intertwined. They would have been separated under the provisions of the condemnation statute because only the valuation of the home is at issue and no other damages, like the ones sued upon in this federal claim.

Therefore, logically speaking, the Honorable District Judge Thompson has ruled, through the use of res judicata, that the plaintiff's had to bring this federal question in state court instead of federal court. The Eleventh Circuit agreed with the district court by stating that this was not a case in which the petitioners had no "reasonable opportunity to raise this federal claim in state proceedings."

However, Article 3, Section 2 of the Constitution of the United States extends the judicial power of the United States "to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United states, and [its] Treaties . . . [and] to all Cases of admiralty and maritime Jurisdiction." The petitioners had the right to bring this action in federal court.

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consideration any elements of loss of value that are legally non-compensable under the law of Alabama. The principal elements made unacceptable by this paragraph are those caused by "an exercise of the police power."

Additionally, the ruling imposed by the Eleventh Circuit is that the petitioners also had to bring this claim *at the same time as the condemnation action was proceeding*, or be barred under res judicata. That essentially creates a statute of limitations on the petitioners that the Fifth Amendment does not impose.

The Eleventh Circuit writes that the petitioners should have "rais[ed] the instant arguments in the Alabama courts through a challenge to the negotiated settlement in the condemnation case." However, as can be seen above, the Condemnation statute specifically forbids this, Section 18-1A-197, paragraph (4).

III. THE PRIVITY ISSUE

There is (in this author's humble opinion) no privity between the State of Alabama and the individual respondents in this manner: The State of Alabama brought the condemnation action as a plaintiff, not the individual defendants in this federal claim. The individuals (sued in this case) worked for the State of Alabama during the condemnation proceeding and violated the Fifth Amendment rights of the petitioners, as stated above.

The State of Alabama did not violate anything– the condemnation statue in which the condemnation suit was brought, was Constitutionally sound. It was in its use that the state employees exceeded their authority and caused the Sophocleus' damage, damages different from the valuation of their home.

Under common law, there can be no privity when the "servant" violates the rule of its own "master." There can be no privity when the "servant" goes beyond the line and scope of his employment. Respondeat Superior does not attach when the agent acts outside the authority of the principal.

There is no question that the State of Alabama's condemnation statute did not authorize the actions of the individual state employees. If it had, there would have been a Constitutional violation against the Act, as well as the individuals.

IV. THE SEVENTH AMENDMENT

The Seventh Amendment preserves the right to trial by jury in "Suits at common law." It is without dispute that the petitioners had a right to a jury trial on the federal claim.

"Collateral estoppel (res judicata, claim preclusion, issue preclusion, *emphasis added*) protects parties from multiple lawsuits and the possibility of inconsistent decisions, and it conserves judicial resources." Montana v. United States, 440 U.S. 147, 153-154 (1979).

The purposes served by res judicata are absent in this case. The individuals sued in this case were not parties to the condemnation case. Montana v. United States, 440 U.S. 147, 153-154 (1979). There are no multiple lawsuits.

This issue was not previously resolved in the condemnation action – the state paid the Sophocleus for the valuation of their home, which the state bought. A judgment for the petitioners would not be inconsistent with the prior state claim. John Sophocleus, et ux. v. Alabama Department of Transportation, et al., 116 Fed. Appx. 246 (11th Cir. 2004), cert. granted and judgment vacated by 126 S.Ct. 37 (2005).

Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979) states that the courts should not dissipate judicial resources in "needless litigation" over previously resolved issues. Clearly, this federal issue was not resolved just because the State of Alabama bought the petitioners home and then paid for it.

This court has ordered litigation in past cases where the lower court dismissed the claim under the doctrine of res judicata. Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962) and Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959).

The Honorable Robert Bork writes that the English common law was built on the single incorrigible concept that if a subject enjoys a right, he must by necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and indeed, it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal.

CONCLUSION

The petitioners request this Honorable Court to accept the Petition for Certiorari.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 09-11809
Non-Argument Calendar

D. C. Docket No. 00-00652-MHT-WC

JOHN SOPHOCLEUS,
THERESA SOPHOCLEUS,

Plaintiffs-Appellants,

versus

STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION,
REESE & HOWELL. INC. et al.,

Defendants,

PAUL BOWLIN, individually and in his official capacity, JIMMY BUTTS, individually and in his official capacity, DEJARVIS LEONARD, MARGIE CHAMPION TODD HOPPER, individually and in her official capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama

(April 7, 2010)

Before EDMONDSON, MARCUS and ANDERSON, Circuit Judges.

PER CURIAM:

Plaintiffs-Appellants John and Theresa Sophocleus appeal the grant of summary judgment in favor of Defendants-Appellees, employees of the Alabama Department of Transportation ("ALDOT") and the denial of relief on Plaintiffs' section 1983 claim. No reversible error has been shown; we affirm.

This litigation has a ten-year history. The underlying facts are set out in two district court opinions and two opinions of this Court; we will state them only briefly here. In 1997, ALDOT notified Plaintiffs that their land was needed in order to widen a highway. In May 1998, the State commenced condemnation proceedings in the probate court; the probate court entered a condemnation decree and valued Plaintiffs' property at $85,000. Plaintiffs refused to vacate their property and appealed the condemnation award to the state trial court for a trial *de novo*. In December 1998, in a separate proceeding in state trial court, the State sought to evict Plaintiffs. In that proceeding, Plaintiffs complained that ALDOT intended to use their house for non-public purposes; no current need for the property existed, and ALDOT had no intention of razing the house. After trial, on 12 January 1999, a writ of eviction issued and possession of the property was granted to the State. Plaintiffs filed no appeal of this decision and vacated their house. Plaintiffs' appeal of the probate court's

condemnation order was still pending in state trial court.

On 11 August 1999, Plaintiffs filed an "Amended Appeal" in the still pending appeal of the condemnation order. In this pleading, Plaintiffs complained that – contrary to ALDOT's earlier representations of immediate need – the State failed and refused to destroy Plaintiffs' home and to use the condemned property to expand the highway. On that same date, Plaintiffs filed documents complaining about the State's use of the property during the period since Plaintiffs were evicted. In September 1999, just before the condemnation proceeding was scheduled for a *de novo* trial in state circuit court, the parties settled the matter: Plaintiffs agreed to the condemnation, and the State agreed to pay them $145,000. The house was razed in November 1999, and a highway now sits in its stead.

The dispute entered the federal court system in May 2000 when Plaintiffs brought this section 1983 action claiming they were forced out of their home from January through August 1999 so that contractors could use their property for office and living space. Plaintiffs contended that such use constituted a private use in violation of their Fifth and Fourteenth Amendment rights. The district court concluded it lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine, *Rooker v. Fidelity Trust Co.*, 44 S.Ct. 149 (1923), and *District of Columbia Court of Appeals v. Feldman*, 103 S.Ct. 1303 (1983). *Sophecleus v. Alabama Dept. of Transportation*, 305

F.Supp. 2d 1238 (M.D. Ala. 2004). In an unpublished opinion, we affirmed, 116 Fed.Appx. 246 (11th Cir. 2004), *cert. granted and judgment vacated by* 126 S.Ct. 37 (2005); the Supreme Court vacated and remanded for further consideration in the light of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 S.Ct. 1517 (2005), wherein the Supreme Court clarified the scope and applicability of the *Rooker-Feldman* doctrine. We, in turn, vacated the district court's opinion and remanded for the district court to consider its jurisdiction in the light of the Supreme Court's *Exxon Mobil* opinion. 170 Fed.Appx. 608 (11th Cir. 2005).

On remand, the district court concluded *Rooker-Feldman* was no bar to its subject-matter jurisdiction; applying Alabama's law of preclusion,[1] the district court concluded the suit was barred by the doctrine of *res judicata*. We agree.

For *res judicata* to apply under Alabama law, these essential elements must be shown:

> (1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both suits.

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[1] In determining the *res judicata* effect of an earlier state court judgment, we apply the *res judicata* doctrine of the state whose decision is set up as a bar to further litigation. *See Green v. Jefferson County Com'n*, 563 F.3d 1243. 1252 (11th Cir. 2009).

Hughes v. Allenstein, 514 So.2d 858, 860 (Ala. 1987). And "[i]f these essential elements are met, any issue that was *or could have been* adjudicated in the prior action is barred from further litigation." *Id.* (empasis in original). Plaintiffs' argument on appeal chiefly focuses on satisfaction of the fourth element: whether the state and federal suits present the same cause of action.[2]

Applying *res judicata* under Alabama law, we have made this observation:

> the principal test for comparing causes of action is whether the primary right and duty or wrong are the same in each action. *Res judicata* applies not only to the precise legal

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[2] The district court said that Plaintiffs raised no challenge to the third element-substantial identity of the parties-but Plaintiffs argue that they raised the privity issue in their brief. Plaintiffs do little more than assert that the privity challenge was made below; the issue is set out on appeal in only the most cursory and conclusory fashion. We conclude that a sufficient identity of interest exists between the parties in the state and federal actions to satisfy Alabama's substantial identity of the parties requirement. *See Gonzalez, LLC v. DiVincenti*, 844 So.2d 1196, 1203 (Ala. 2002) ("Judgments can bind persons not party (or privy) to the litigation in question where the nonparties' interests were represented adequately by a party in the original suit. A person may be bound by a judgment even though not a party to a suit if one of the parties to the suit is so closely aligned with his interests as to be his virtual representative. Moreover, if a party has a sufficient laboring oar in the conduct of the litigation, then the principle of *res judicata* can be actuated.") (internal quotations and citations omitted); *see also, N.A.A.C.P. v. Hunt*, 891 F.2d 1555, 1560-61 (11th Cir. 1990).

> theory presented in the prior case, but to all legal theories and claims arising out of the same nucleus of operative fact.

N.A.A.C.P. v. Hunt, 891 F.2d 1555, 1560-61 (11th Cir. 1990) (internal quotations and citations omitted). So, too, the Alabama Supreme Court has said, "[i]f a claim, which arises out of a single wrongful act or dispute, is brought to a final conclusion on the merits, then all other claims arising out of the same wrongful act or dispute are barred, even if those claims are based on different legal theories or seek a different form of damages. . . ." *Equity Resources Management, Inc. v. Vinson,* 723 So.2d 634, 638 (Ala. 1998).

In the state-court condemnation proceeding, Plaintiffs alleged improper non-public use of their property.[3] Nonetheless, Plaintiffs contend that, even though their pleadings referenced the state's improper use of their property for non-public purposes,

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[3] Plaintiffs argue that the non-public use of their property post-dated the commencement of the probate and condemnation proceedings and, therefore, those proceedings can be no barrier to this federal suit. *See In re Piper Aircraft Corp.*, 244 F.3d 1289, 1298 (11th Cir. 2001) (*res judicata* has no application where facts giving rise to claim post-date original pleading in earlier litigation). Under *Piper* a plaintiff is not obliged to supplement the pleadings by adding an after-acquired claim. *Id.* But Plaintiffs did supplement the pleadings; they set out their allegation of non-public use of their property in their amended appeal of the condemnation order and in pretrial submissions. Unlike the situation in *Piper,* the facts underlying Plaintiffs' non-public use claims actually were raised as the case unfolded. *See id.* at 1298-99.

they never asserted a federal just-compensation constitutional claim in the state proceedings. "Claim preclusion bars the litigation of matters that could have been litigated in an earlier suit." *Pelletier v. Zweifel*, 921 F.2d 1465, 1501 (11th Cir. 1991). As this Court and the district court have now each said twice, the arguments made by Plaintiffs in this action were or could have been raised in the Alabama condemnation proceedings.

AFFIRMED.

IN THE DISTRICT COURT
OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF
ALABAMA, EASTERN DIVISION

JOHN AND THERESA SOPHOCLEUS,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 3:00cv652-MHT (WO)
ALABAMA DEPARTMENT OF TRANSPORTATION, et al.,	)	
Defendants.	)	

OPINION

(Filed Mar. 12, 2009)

Plaintiffs John and Theresa Sophocleus bring this lawsuit against defendants Margie Champion Todd Hopper, Paul Bowlin, Jimmy Butts, and DeJarvis Leonard.[1] The Sophocleuses claim that the defendants, who are employees of the Alabama Department of Transportation, took their home for private use from January through August 1999, in

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[1] This court has dismissed claims against some defendants initially named in the complaint: the Alabama Department of Transportation (dismissed Feb. 18, 2003); Mack Roberts and Rhonda Ashworth (Mar. 10, 2003); and Reese & Howell (Feb. 22, 2006). The Sophocleuses' claims under 42 U.S.C. § 1985 have also been dismissed (Feb. 22, 2006).

violation of the Fifth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983. They also claim that, during this period, the defendants committed the state torts of trespass, invasion of privacy, and outrage. Jurisdiction over the federal claim is proper under 28 U.S.C. §§ 1331 and 1343; jurisdiction for the state-law claims is proper under 28 U.S.C. § 1367(a).

This case is before the court on the defendants' motions for summary judgment. The motions will be granted.

I. SUMMARY-JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The court's role at the summary-judgment stage is not to weigh the evidence or to determine the truth of the matter, but rather to determine only whether a genuine issue exists for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). In doing so, the court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in favor of that party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

II. PROCEDURAL HISTORY AND FACTS

This case arises out of the State of Alabama's plan to build a road that required taking the Sophocleuses' property.[2] On May 19, 1998, the State filed a petition in state-probate court to condemn the Sophocleuses' property and several other tracts of land. The condemnation petition alleged that the acquisition of this property was in the public interest and necessary for public use as a right-of-way for the construction and maintenance of a public road. On August 3, the probate court entered a decree of condemnation that awarded the Sophocleuses $85,000 for their property. On September 7, the Sophocleuses appealed the probate court's order to state-circuit court, and the parties began discovery in preparation for a de novo trial under 1975 Ala. Code § 18-1A-283.

On December 7, 1998, during the discovery period for the condemnation suit, the State filed a separate suit in state court seeking to evict the Sophocleuses from the property. In response to the eviction petition, John Sophocleus filed an affidavit on December 21, alleging that the Transportation Department intended to use his house as an office rather than razing it to build the road. At the January 1999 trial in the eviction proceeding, witnesses testifying on behalf of the Transportation Department

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[2] The factual background in this case has been recited in greater detail in *Sophocleus v. Alabama Dep't of Transp.*, 305 F. Supp.2d 1238 (M.D. Ala. 2004) (Thompson, J.).

stated, in contrast, that the property had to be razed immediately as part of the road project. That same day, the court issued a writ of possession, evicting the Sophocleuses and granting possession of the property to the State. The Sophocleuses did not appeal and surrendered possession one week later.

On August 11, 1999, the Sophocleuses filed an "Amended Appeal" to the condemnation action – which was still in discovery – asserting that the State's claimed public use was untrue. They argued that the house was still standing and that the Transportation Department had thus misled the court in January by stating that the Sophocleuses' property must be razed immediately. In support of their argument that the property was not needed for the road construction, they claimed that other nearby landowners were permitted to remain on their property, despite the supposed immediate public need for it. Additionally, John Sophocleus had already alleged, in his eviction-proceeding affidavit, that Transportation Department officials intended to use his house for work purposes and not for actually building the road.

The parties settled the case the day before the condemnation proceeding was scheduled for a de novo trial in state circuit court. The Sophocleuses agreed to the condemnation, and the State agreed to pay them $145,000. On September 23, 1999, the state court accepted the parties' settlement; found that the allegations of the condemnation petition were true; and entered an order of condemnation. The Sophocleuses' house was razed in November 1999, and

Highway 280 now occupies the land where the house used to be.

The Sophocleuses filed this federal lawsuit on May 19, 2000. They alleged that they were forced out of their home by the defendants from January to August 1999 so that contractors could use the house as private living quarters and an office. They alleged, as evidence of private use, that they and others had gone past the house in the evening and seen the TV on, heard loud music, seen private vehicles being worked on in the shop, and seen people playing football or riding four-wheelers in the front yard. They claimed that this private use of their property, which was taken for public use, violated their Fifth and Fourteenth Amendment rights as well as certain rights under state law.

The Sophocleuses' suit then began its federal-court saga. On January 26, 2004, pursuant to the *Rooker-Feldman* doctrine (which derives its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983)), this court found that it lacked subject matter jurisdiction to hear the Sophocleuses' claims and dismissed the case. *Sophocleus v. Ala. Dep't of Transp.*, 305 F. Supp.2d 1238, 1251 (M.D. Ala. 2004) (Thompson, J.). The Court of Appeals for the Eleventh Circuit affirmed, *Sophocleus v. Alabama,* 116 F. App'x 246 (11th Cir. Aug. 2, 2004). The Sophocleuses petitioned for a writ of certiorari, and the Supreme Court granted the petition and vacated the appellate-court judgment for reconsideration in

light of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), its then-recent decision clarifying the *Rooker-Feldman* doctrine. *Sophocleus v. Ala. Dep't of Transp.*, 546 U.S. 801 (2005). The Eleventh Circuit then remanded the case to this court for further proceedings. *Sophocleus v. Ala. Dep't of Transp.*, 170 F. App'x 608 (11th Cir. 2005).

As this case now stands, only four defendants remain: DeJarvis Leonard, Margie Champion Todd Hopper, Paul Bowlin, and Jimmy Butts, all of whom are employees of the Transportation Department and are being sued in their individual capacities.

III. DISCUSSION

The most basic statement of the *Rooker-Feldman* doctrine is that "appellate jurisdiction to reverse or modify a state-court judgment is lodged, initially by § 25 of the Judiciary Act of 1789, 1 Stat. 85, and now by 28 U.S.C. § 1257, exclusively in th[e Supreme Court]. Federal district courts . . . are empowered to exercise original, not appellate, jurisdiction." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005).[3] Despite this uncontroversial

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[3] As explained in *Noel v. Hall*, 341 F.3d 1148, 1155 (9th Cir. 1993), two exceptions to this rule are provided by statute. First, a federal district court may hear petitions for habeas corpus from prisoners claiming that the state court erred in applying federal law. 28 U.S.C. § 2254. Second, federal bankruptcy courts have the power to challenge or discharge state-court judgments. *See, e.g.*, 11 U.S.C. §§ 727, 1141, 1328.

statement, the Supreme Court in *Exxon* expressed concern that the doctrine was ballooning past its original narrow boundaries and depriving lower federal courts of their proper concurrent jurisdiction. *Id.* The Court therefore announced a return to the original "narrow ground" of the *Rooker-Feldman* doctrine. *Id.* at 284, 125 S.Ct. 1517. This court must now apply the clarified post-*Exxon* doctrine to the Sophocleuses' claims.

A. *Rooker-Feldman*

1. Foundation of the doctrine

In *Rooker,* a party to a lawsuit – after losing in a state supreme court and failing to obtain Supreme Court review – filed an action in federal district court seeking to declare the state judgment null and void. 263 U.S. at 414-15. The Court construed the federal court action as an improper attempt to obtain appellate review of the state decision in a lower federal court. *Id.* at 416. It held that only the Supreme Court may entertain a proceeding to reverse or modify a state-court judgment, and it thus concluded that the federal district court lacked jurisdiction to hear the case. *Id.* at 415-16.

In *Feldman,* the plaintiff petitioned the District of Columbia Court of Appeals, the equivalent of the District of Columbia's supreme court, to waive a bar admission rule that prevented his admission to the D.C. bar. 460 U.S. at 467-73. When the D.C. court denied his waiver requests, the plaintiff sued in federal

district court. He sought a declaration that the court's decision to deny waiver violated the Constitution, as well as a declaration that the rule he wished waived was itself unconstitutional. *Id.* at 469 n.3, 472-73. The Supreme Court held that the former claim impermissibly sought direct federal-court review of the state-court judgment. In the latter claim, however, the court did have jurisdiction because the plaintiffs sought review of the constitutionality of a "rule promulgated in a *non-judicial proceeding*." *Id.* at 486 (emphasis added). The nature of the proceeding made all the difference: lower courts are barred from reviewing only state *judicial* decisions.

Feldman's greatest impact has come from a puzzling phrase in the opinion, in which the Court noted that the plaintiff's claim against the bar rule as applied to him was "*inextricably intertwined* with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny the respondents' petitions." *Id.* at 486-87 (emphasis added). With this phrase, the Court appeared to extend the *Rooker-Feldman* doctrine to prohibit lower federal-court jurisdiction not just if the federal decision would override the state judgment, but also if the state and federal claims are somehow "inextricably intertwined." The Circuit Courts of Appeals differed in their interpretation of this phrase, resulting in four general approaches to it. *See generally* Allison B. Jones, Note, *The* Rooker-Feldman *Doctrine: What Does It Mean To Be Inextricably Intertwined?*, 56 *Duke L.J.* 643, 661-674 (2006). Some of these approaches to the phrase

dramatically expanded the contours of the doctrine, *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 86 (2d Cir. 2005), and are now impermissible after *Exxon*.

2. Expansion of the doctrine since *Feldman* on the basis of "inextricably intertwined"

The broadest interpretation of "inextricably intertwined" rendered *Rooker-Feldman* functionally equivalent to res judicata. In *Moccio v. New York State Office of Court Administration*, 95 F.3d 195, 199-200 (2d Cir. 1996), for example, this phrase meant that, "[i]f the precise claims raised in a state court proceeding are raised in the subsequent federal proceeding, *Rooker-Feldman* plainly will bar the action." *Id.* at 198-99. As will be described in the next section, *Exxon* barred this approach.

Another method has some overlap with issue preclusion, but it is narrower and more nuanced than the res-judicata approach. Under this interpretation, used by the Eleventh Circuit prior to *Exxon*, federal courts had no jurisdiction under *Rooker-Feldman* "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 2001).[4] This court used that formulation in

[4] Several of the courts using this approach cite its source, Justice Marshall's concurrence in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987): "[I]t is appropriate, as a first step, that the

(Continued on following page)

its prior decision on the Sophocleuses' claims. *Sophocleus,* 305 F. Supp.2d at 1246 (giving the Sophocleuses relief would require undermining the conclusions of the state court). Under this interpretation, federal courts are essentially precluded from deciding whatever "issues" could undermine the basis for the state-court decision, even if the claim does not attack the state-court judgment itself. This approach, too, was ultimately rejected by the Court in *Exxon.*

The third method of applying *Rooker-Feldman,* articulated in the Seventh Circuit case of *GASH Associates v. Village of Rosemont,* 995 F.2d 726 (7th Cir. 1993), is considerably narrower than the first two. Its formulation, quoted approvingly by the Supreme Court in *Exxon,* 544 U.S. at 293, poses one decisive question: "[I]s the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party?" *GASH,* 995 F.2d at 728.

The final method of interpreting "inextricably intertwined" prior to *Exxon* is the Ninth Circuit's unique two-part test, which *Noel v. Hall,* 341 F.3d 1148, 1164 (9th Cir. 2003), derived from both *GASH* and a close tracking of the Supreme Court's approach in *Feldman.* First, the court determines whether a

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federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Id.* at 25.

claim constitutes a "forbidden de facto appeal" attempting to override the state-court judgment. *Id.* at 1158. A de facto appeal arises when the federal plaintiff "complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court," *id.* at 1163. And as such, a de facto appeal is identical to what the *GASH* test also prohibits.

The *Noel* test departs from *GASH* by adding a slight additional step. Only if a de facto appeal is present may the court consider that the plaintiff "may not seek to litigate an issue that is 'inextricably intertwined' with the state court decision from which the forbidden de facto appeal is brought." *Id.* at 1158. This method serves to prevent a federal plaintiff "from making an end-run around the rule against de facto appeals," *Kougasian v. TMSL,* 359 F.3d 1136, 1142 (9th Cir. 2004). This version of "inextricably intertwined," however, has limited application. Because it is based on *Feldman,* it is only relevant in the rare cases where it is necessary to determine if the court has jurisdiction to hear a claim after another claim has already been found to be a forbidden de facto appeal. As *Noel* itself concedes, "[a]s a practical matter, the 'inextricably intertwined' test of *Feldman* is likely to apply primarily in cases in which the state court both promulgates and applies the rule at issue – that is, to the category of cases in which the lower court has acted in both a legislative and a judicial capacity." 341 F.3d at 1158.

3. *Exxon*'s impact on the *Rooker-Feldman* doctrine

In *Exxon,* the unanimous Supreme Court denounced the expansion of the *Rooker-Feldman* doctrine and expressly limited the doctrine by "confin[ing it] to cases of the kind from which the doctrine acquired its name." 544 U.S. at 284. Cases are therefore subject to the doctrine if: "[(1)] brought by state-court losers [(2)] complaining of injuries caused by state-court judgments [(3)] rendered before the district court proceedings commenced and [(4)] inviting district court review and rejection of those judgments." *Id.* The first and third elements are more procedural, while the second and fourth are more substantive in their opposition to the state-court judgment. *See Hoblock,* 422 F.3d at 85. *Lance v. Dennis,* 546 U.S. 459, 466 (2006), decided less than one year after *Exxon,* clarified the first element by holding that the doctrine does not bar "actions by non-parties to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment." *Id.* at 466.

With its narrow holding, *Exxon* rejects the two broadest methods previously used by the lower courts to apply *Rooker-Feldman* via the phrase "inextricably intertwined." The interpretation that took the worst beating is the approach functionally conflating the doctrine with res judicata by defining "inextricably intertwined" claims as those that had already been argued in state court. At first glance, this approach seems rational, as "both sets of principles define the

respect one court owes to an earlier judgment." *GASH,* 995 F.2d at 728. But the Supreme Court explicitly threw out this interpretation, stating plainly that if a federal plaintiff presents a claim that does not seek to overturn a state-court judgment, "there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." *Id.* at 293. In case lower courts still failed to understand, *Lance* made it even simpler: "*Rooker-Feldman* is not simply preclusion by another name." 546 U.S. at 466.

After the res-judicata approach, the broadest pre-*Exxon* interpretation of "inextricably intertwined" found no jurisdiction "if the federal claim succeeds only to the extent that the state court wrongly decided *the issues* before it." *Goodman,* 259 F.3d at 1332 (emphasis added). *Exxon* implicitly rejects this interpretation of the doctrine by quoting the *GASH* statement that, "If a federal plaintiff 'present[s] some independent claim, albeit one that denies a *legal conclusion* that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.'" 544 U.S. at 293 (emphasis added) (quoting *GASH,* 995 F.2d at 728).

While the meaning of "legal conclusion" is not entirely clear, "it suggests that a plaintiff who seeks in federal court a result opposed to the one he achieved in state court does not, for that reason alone, run afoul of Rooker-Feldman." *Hoblock,* 422

F.3d at 87. The distinction is subtle, but it means that a federal court may hear claims about a state-court "legal conclusion" – even if the state courts have previously rejected that claim or if it would undermine the state-court judgment – in contrast to its utter prohibition from hearing claims that would vacate a state-court judgment. This difference can be elucidated by considering *Feldman*. In that case, the Court concluded that the *Rooker Feldman* doctrine did not prohibit federal-court jurisdiction for a constitutional challenge to a bar rule, even though the court's judgment that the rule was correctly applied to the plaintiffs would be severely undermined if the rule itself were found to be unconstitutional. Ultimately, whether the federal court may challenge a particular legal conclusion is properly an issue of preclusion, not jurisdiction.

By rejecting these two methods of applying the *Rooker-Feldman* doctrine, *Exxon* so thoroughly cut back the thicket surrounding the *Rooker-Feldman* doctrine that Justice Stevens, in his dissent in *Lance v. Dennis,* went so far as to characterize the *Exxon* opinion as having "finally interred" a doctrine that has "produced nothing but mischief for 23 years." 546 U.S. at 468. But the doctrine, narrower though it may be, is not through with us yet.

4. How to interpret "inextricably intertwined" after *Exxon*

While *Exxon* clearly limited the *Rooker-Feldman* doctrine, the Supreme Court's attempt to resolve differing interpretations among the circuits, 544 U.S. at 291, did not fare as well as might have been wished. Beyond the rejection of two methods of interpretation, as described above, the Court declined to clarify the meaning of "inextricably intertwined," the phrase responsible for "much of the confusion regarding the *Rooker-Feldman* doctrine." *Bolden v. City of Topeka,* 441 F.3d 1129, 1140 (10th Cir. 2006). *Exxon* uses the phrase three times but does so only to note that it appeared in *Feldman* and in the erroneous decision below, 544 U.S. at 286 & n.1; to the frustration of lower courts, *Exxon* "quotes Feldman's use of the phrase but does not otherwise explicate or employ it." *Hoblock,* 422 F.3d at 86. But, because the *Rooker-Feldman* doctrine did not apply in *Exxon* on procedural grounds – the plaintiff was not a lower court loser, nor had the state suit come to judgment, *see Exxon* 544 U.S. at 293 – perhaps the Court saw no need to clarify the meaning of "inextricably intertwined," which has more resonance for *Exxon*'s two substantive requirements than for the two purely procedural ones.

The consequence of the Court's ignoring the phrase means that, after *Exxon,* lower courts do not know if they still must apply "inextricably applied" or how to do so. This court's analysis of the issue has no binding precedent to follow; as described previously,

the Eleventh Circuit's pre-*Exxon* interpretation of the phrase cannot stand, nor has the Eleventh Circuit issued any published decisions since *Exxon* expressly addressing whether the phrase "inextricably intertwined" has continued viability and, if so, how.[5] But, by reviewing decisions of other circuits, this court has determined that a careful analysis of *Exxon* reveals that the kerfuffle over "inextricably intertwined" has, in fact, largely been quieted.

While there are variations, the most common approach among the circuits seems to be variants of the Seventh Circuit's pre-*Exxon* opinion in *GASH Associates v. Village of Rosemont,* 995 F.2d 726 (7th Cir. 1993). As such, they reject the notion that "inextricably intertwined" has any meaning beyond the four elements enumerated in *Exxon.* In *Hoblock,* for example, the Second Circuit described *Exxon* as "par[ing] back the *Rooker-Feldman* doctrine to its core" by limiting "inextricably intertwined" claims to those that meet *Exxon*'s four requirements. 422 F.3d at 85. This definition means that "the phrase 'inextricably intertwined' has no independent content. It is simply a descriptive label attached to claims that meet the requirements outlined in *Exxon Mobil.*" *Id.*

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[5] The Eleventh Circuit has recently applied the *Rooker-Feldman* doctrine in two appeals, *Nicholson v. Shafe,* ___ F.3d ___, 2009 WL 385579 (11th Cir. 2009); *Casale v. Tillman,* ___ F.3d ___, 2009 WL 368301 (11th Cir. 2009), but in neither did the appellate court, either expressly or implicitly, address the issue of the continued viability of the phrase "inextricably intertwined."

See also Davani v. Va. Dep't of Transp., 434 F.3d 712, 719 (4th Cir. 2006) ("Feldman's 'inextricably intertwined' language does not create an additional legal test . . . but merely states a conclusion: if the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, 'inextricably intertwined' with the state-court decision."); *McCormick v. Braverman*, 451 F.3d 382, 394-95 (6th Cir. 2006) ("[T]he phrase 'inextricably intertwined' only describes the conclusion that a claim asserts an injury whose source is the state court judgment."); *Bolden v. City of Topeka*, 441 F.3d 1129, 1141 (10th Cir. 2006) ("[T]he term is not being used to expand the scope of the *Rooker* bar beyond challenges to state-court judgments."); *TruServ Corp. v. Flegles, Inc.*, 419 F.3d 584, 591 (7th Cir. 2005) (claim was not "inextricably intertwined" because the injury did not arise from the prior state court lawsuit and because the federal court would not need to set aside a state-court judgment in order to find for the plaintiff).

In short, the alpha and omega for the doctrine is that the case must be "[(1)] brought by state-court losers [(2)] complaining of injuries caused by state-court judgments [(3)] rendered before the district court proceedings commenced and [(4)] inviting district court review and rejection of those judgments." *Exxon*, 544 U.S. at 284.

5. Application of the *Rooker-Feldman* doctrine to the Sophocleuses' claims

All that remains is to apply the *Rooker-Feldman* doctrine here. This case involves two state-court judgments – one for eviction and the other for condemnation and valuation – resulting from the parties' settlements. The Sophocleuses concede that the state court correctly evicted them from their property and do not challenge or discuss the eviction judgment. In the condemnation proceeding, the state court entered a judgment condemning the Sophocleuses' property for the public uses and purposes stated in the petition for condemnation. While the Sophocleuses do not directly challenge the judgment, since they do not seek the return of their land, it is implicated in that their claims rest on whether the land was actually put to public use.

Nevertheless, because the key substantive requirements from *Exxon* for the application of the *Rooker-Feldman* doctrine are not present, the Sophocleuses' federal suit is not barred under *Rooker-Feldman* based on the state-condemnation judgment, *Exxon*, 544 U.S. at 291-292. The Sophocleuses' claims easily meet the two procedural requirements, since the federal action is brought by a state-court loser and the state-court judgment was rendered before the district-court proceedings began.[6] But the Sophocleuses do

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[6] The Sophocleuses technically settled, rather than lost, but the settlement involved the entry of an adverse judgment in the condemnation case.

not invite this federal court to 'review' and 'reject' the state judgment. Indeed, they invite this court to honor the state judgment, and then some, that is, by awarding them additional money because the defendants used their property for non-public purposes. This court could grant the Sophocleuses full relief without disturbing either of the state-court eviction and condemnation judgments.

Moreover, even if their federal litigation could be viewed as at odds with the state ligation because they seek additional relief (and particularly, as appears here, relief that was denied in state court), the Supreme Court has made clear that this court has jurisdiction and that state law should determine whether they should prevail under principles of preclusion. *See Exxon*, 544 U.S. at 293 ("If a federal plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.'") (quoting *GASH*, 995 F.2d at 728); *Nicholson v. Shafe*, ___ F.3d ___, ___, 2009 WL 385579, *6 (11th Cir. 2009) ("Rooker-Feldman does not prohibit a 'district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court.'") (quoting *Exxon*, 544 U.S. at 293); *Hoblock*, 422 F.3d at 87 ("a plaintiff who seeks in federal court a result opposed to the one he achieved in state court

does not, for that reason alone, run afoul of Rooker-Feldman").

Accordingly, heeding the Supreme Court's admonition in *Exxon* that the *Rooker-Feldman* doctrine is "limited" and occupies "narrow ground," 544 U.S. at 284, 291, this court concludes that the doctrine does not apply in this case and that this court therefore has subject-matter jurisdiction to consider the Sophocleuses' claims.

B. Preclusion

Since this court has jurisdiction to hear the Sophocleuses' claims, it must now consider the question of whether such claims are precluded by the state-court proceedings.

Because using precise legal terminology is critical when discussing the preclusive effects of former adjudication, this court adopts the Supreme Court's definitional framework set out in *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984): "The preclusive effects of former adjudication . . . are referred to collectively . . . as the doctrine of res judicata. Res judicata is often analyzed further to consist of two preclusion concepts: issue preclusion and claim preclusion. Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided. This effect is also referred to as direct or collateral estoppel. Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been

litigated, because of a determination that it should have been advanced in an earlier suit. Claim preclusion therefore encompasses the law of merger and bar." (Internal quotations omitted); *see also Gjellum v. Birmingham,* 829 F.2d 1056, 1059 (11th Cir. 1987) (adopting *Migra* definitions of res judicata, issue preclusion, and claim preclusion). Because the prior judgment at issue was an Alabama-court judgment, this court must apply Alabama's law of preclusion. *See McDonald v. Hillsborough County School Bd.,* 821 F.2d 1563, 1565 (11th Cir. 1987); *Kachler v. Taylor,* 849 F. Supp. 1503, 1515-16 (M.D. Ala. 1994) (Thompson, J.).

Under Alabama law, the essential elements of res judicata are: "'(1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both suits.' *Hughes v. Allenstein,* 514 So.2d 858 (Ala. 1987). . . . If all of these elements are met, any claim that was or could have been adjudicated in the previous action is precluded." *N.A.A.C.P. v. Hunt,* 891 F.2d 1555, 1560 (11th Cir. 1990). Identity of parties concerns two sets of persons. The first set comprises "those persons who were actual parties in the original action." *Id.* The second set of persons to whom res judicata applies comprises "those persons who are or were in privity with the parties to the original suit." *Id.* Privity exists "where the nonparty's interests were represented adequately by the party in the original suit." *Id.* Privity also exists "where a party to the

original suit is 'so closely aligned to a nonparty's interest as to be his virtual representative.'" *Id.* at 1560-61 (quoting *United Merchants & Mfrs. v. Sanders,* 508 So.2d 689, 692 (Ala. 1987)).

The Sophocleuses have not challenged the first three elements listed above for claim preclusion, so the question of res judicata hangs on the fourth. Causes of action are considered identical if the legal theories and claims arise out of the same nucleus of operative fact. *Pleming v. Universal-Rundle Corp.,* 142 F.3d 1354, 1356 (11th Cir. 1998); *NAACP v. Hunt,* 891 F.2d 1555, 1561 (11th Cir. 1990). A court, then, examines "the factual issues that must be resolved in the second suit and compares them with the issues explored in the first case." *Pleming,* 142 F.3d at 1357.

Here, in the state-court condemnation proceeding the Sophocleuses alleged improper non-public use of the property in their amended appeal and pretrial contentions and thus are precluded from arguing it again here, as the basis for their claims in federal court.[7] In fact, they made the allegation twice: first

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[7] The Sophocleuses attempt to avoid a finding that they have already raised this claim by trivializing their amendment and by arguing that Alabama law prohibits them from amending their complaint. In their own brief, for example, they mock their amended complaint by stating "[w]hy this document was filed is, simply, inexplicable. It is absolutely meaningless." Pls.' Resp. to State Defs.' Br. for Summary Judgment (Doc. No. 122) at 7 n.1. Their contention that they could not lawfully appeal is also without merit, as Alabama law provides for amendment of pleadings in an appeal of a condemnation proceeding, even

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in John Sophocleus's affidavit in the eviction action, and then again in the amended appeal of the condemnation action.[8] State-law principles of preclusion bar this federal case.[9]

* * *

Although this action is not barred by the *Rooker-Feldman* doctrine, it is barred by the doctrine of res judicata. The motions for summary judgment will therefore be granted. An appropriate judgment will be entered.

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where those amendments include the allegation of new facts. *Cloverleaf Land Co. v. State*, 163 So.2d 602, 604 (Ala. 1964).

[8] This court reached essentially the same conclusion in its decision on this case prior to its remand, *Sophocleus*, 305 F. Supp.2d at 1246, 1250-51, and nothing suggests that the facts have changed in the meanwhile.

[9] To invoke collateral estoppel or issue preclusion properly, a party must show three prerequisites: "(1) the issue at stake must be identical to the one alleged in the prior litigation; (2) the issue must have been actually litigated in the prior litigation; and (3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in that earlier action. In addition, the party against whom the earlier decision is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding." *Nobles v. Rural Cmty. Ins. Servs.*, 303 F.Supp.2d 1292 (M.D. Ala. 2004) (Thompson, J.), *aff'd*, 116 Fed.Appx. 253 (11th Cir. 2004) (table). These requirements are met here as well, for the issue in the earlier state-court proceedings and the issue in the current federal proceeding are one and the same: whether the State of Alabama intended to, and did, put the Sophocleuses' property to improper non-public use.

DONE, this the 12th day of March, 2009.

/s/ Myron H. Thompson
UNITED STATES
DISTRICT JUDGE